

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ROBERT MICHAEL HUGHES,

Petitioner,

v.

ORDER

Civil File No. 10-450 (MJD/SRN)

WARDEN JOHN KING,

Respondent.

Robert Michael Hughes, pro se.

Kimberly R. Parker and Matthew Frank, Minnesota Attorney General's Office,
Counsel for Respondent.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Susan Richard Nelson dated March 4, 2010. [Docket No. 3] Petitioner Robert Michael Hughes filed objections to the Report and Recommendation.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court **ADOPTS** the Report and Recommendation of United States Magistrate

Judge Susan Richard Nelson dated March 4, 2010.

In his objections, Petitioner requests equitable tolling based on difficulties regarding his footlocker space and his discipline and cell searches while in prison. The Court concludes that tolling does not apply in this case. Hughes fails to show that these issues so stymied his efforts that he could not file the petition within the one-year limit, particularly considering that he now asserts legal issues identical to those he raised on direct appeal. See Finch v. Miller, 491 F.3d 424, 427 (8th Cir. 2007) (“Because there is not an abstract, freestanding right to a law library or legal assistance, an inmate cannot establish relevant actual injury simply by establishing that his prison’s law library or legal assistance program is subpar in some theoretical sense.”) (citation omitted).

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The Court **ADOPTS** the Magistrate Judge’s Report and Recommendation dated March 4, 2010 [Docket No. 3].
2. Petitioner’s application for a writ of habeas corpus [Docket No. 1] is **DENIED**.
3. Petitioner’s application for leave to proceed in forma pauperis [Docket No. 2] is **DENIED**.

4. Motion for Time Extension or Tolling for 28 U.S.C. § 2254 Filing [Docket No. 4] is **DENIED**.
5. Motion of Response to State of Minnesota Rebuttal Letter Dated April 7, 2010 [Docket No. 9] is **DENIED** because the document is not actually a motion, but, instead, is an additional objection to the Report and Recommendation, which the Court has considered in reaching its decision.
6. This action is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 20, 2010

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court